Opinion

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If Mrs. Gandhi Were A Lover Of Wisdom

She would at least by now .....

* Have settled the Kashmir question with Pakistan on the basis of the line of actual control (they have what they hold and we have what we hold).

* Have settled the border dispute with China on the basis of its accepting our boundaries on the east and middle and we accepting its on the west.

To prolong these disputes when there is no possibility of our ever being able, or wanting, to settle them by the use of force is futile, an unnecessary waste of energy and resources.

* Have recognised that to exhort honesty to the administration and the people without being completely honest oneself is, in the words of a Sindhi proverb—To spit up into the air in order to have the spit fall on your own face. Satan rebuking Sin is an unedifying spectacle and arouses only disbelief, indignation or cynical mirth.

* Have known who among her colleagues and subordinates was honest and who dishonest.

* Have observed the old maxim that to achieve even comparative honesty in government and administration one must be prepared rigorously to degrade the dishonest and promote the honest.

* Have understood that her system of choosing her principal colleagues in the states, because of their facility in collecting funds and their enthusiastic subordination to her, was bound to lead to disaster sooner or later. Honest men, chosen for their merit and the confidence the people reposed in them, would as Chief Ministers, have had proper support among the legislatures and people. Men lacking integrity not only rouse factions but even bring destruction to her party.

* Have also understood that even if her nominee for the principal position lacks integrity, it is not for her to weaken his position by encouraging dissidents. To choose unworthy people for high positions is bad enough, to let them continue in unworthy conduct is worse, to then raise dissidents against them in order to prevent their becoming less subservient to her is worst.

* Have realised what a mistaken course she has adopted in Assam,

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turning the docile, quiet people of that frontier province into dissatisfied agitators, lawbreakers and resorters to violence, and would have taken action long before this, when they were merely protesting lawfully to rectify their very real grievance about the inclusion of recent foreign immigrants into their electoral role. Also that to insist on elections being held now on the basis of uncorrected electoral roles was adding insult to injury and was bound to evoke more violence, leading to injury and death to innocent people for which in the last resort she would be primarily responsible.

* Have been ashamed to go around asking for increased grants and loans from international financial institutions and other countries when she cannot but be aware that at least 15 per cent to 20 per cent of the funds allocated for every project go in graft and waste and value is at most received for 75 per cent of the money allocated.

All her energies should have been devoted during her many years of rule to improving this situation.

* Have also learnt to beware of gigantomania and facadism on the promotion of which, from the date of our independence, thousands of crores have been spent. An old administrative maxim, which she must have heard but which seems to have left no impression on her mind, is that any person in authority sanctioning expenditure should only do so if he is certain that he would authorise the expenditure if the money to be spent came from his own pocket. On that basis not many of the vast and showy buildings in Delhi and the state capitals would have been put up, and thousands of crores would have been saved. This applies to quite a number of grandiose schemes which, after much money has been spent, come to nothing. Public finances are the result of the sweat, toil, and tears of the ordinary people and should be spent essentially on the real public good.

* Have learnt that what is not inspected is often not done. Failure to apply this has resulted in shoddy work, or no work and enormous waste.

* Have known that if the Chief regards loyalty to herself personally as the most important element in her subordinates and considers their regarding the public interest as unimportant, the principal result that will follow are flattery and bad government.

Mrs. Gandhi's conduct during the many years of her rule after the first two, including even the last few years since she had a new lease of life in 1980, show that she is incapable of correcting those defects. She has no sense either of integrity or the public interest. As has been stated time and again in *Opinion*, like the Sun King of France she too lives by the saying "The state, it is I" (*L 'etat, c'est moi*). All power is her goal and any measures taken for that end are, to her, justified. That is why no real improvement, no real move towards clean government can take place so long as she is there. If the **fons-et-origo** of ill-government and authoritarian power remains stable the future for decent citizens, men of good-will, and the Indian nation cannot but be bleak.

A.D.G.

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Denning & Our Judges

A. G. NOORANI

ON July 30, 1982 in a court crowded as never before, in the presence of some 40 members of the Bench of all degrees, the Law Officers of the Crown with Registrars, Masters, QCs juniors, solicitors and others, valedictory speeches were made to Lord Denning on his retirement as Master of the Rolls. He had served for nearly 40 years as a judge.

The tone was set by Lord Hailsham the Lord Chancellor, who said that it was given to few men to become a legend in their lifetime. There would be few who would deny that Lord Denning was one of those few. From the numbers and standing of his own fraternity of the law assembled in court to do him honour, one could readily infer that he had been and was a golden legend.

It was a period of great change, Lord Hailsham remarked. But it would be wholly unjust to others to ascribe all of those changes to the Master of the Rolls, who was now at length to doff his wig and lay aside his silk and golden robes. It would be equally wrong not to acknowledge the vast debt which the revival of the common law owed to his deep learning, his powerful legal intellect, and even to his telling and pungent English style.

Alas, so great a judge was not free from great failings. Vanity, love of publicity, hubris and ambition were among them. So was a strong tinge of racial bias and indifference to the lot of the underprivileged. He overstayed on the Bench and was too small to allow a superior intellect like Lord Scarman to succeed him. Scarman's fame is secure, all the same. It is Denning who suffered. One is betrayed by what is false within. The false streak led Denning to make racist remarks in his latest book *What Next in the Law* which was published last May. A howl of protest followed and so did credible threats of libel suits. Denning stepped down a few months earlier than *he had meant to*. *What Next in the Law* has since been published in a racially sanitized form. (Butterworths; £ 5.95.) It is a truly superb book. How does one reconcile the pettiness and the greatness in one and the same person? That wise observer of men and matters, the founder of this journal, would often chide this writer when in moments of exasperation he would criticise too sharply the failings of the great and express his utter inability to understand how the great could yet be so petty. Uncle Gorwala's aphorism defies improvement — "Men are not of one piece." How very true, indeed. I should take the liberty of adding that he is that rare exception — true all over.

Our lawyers and our judges should ponder a bit on Denning. The latest book reflects, as did earlier ones, his learning as well as the simple elegance of his prose. What pompous, bombastic English do we write? Often, not because we cannot write simply, but because we write to impress, not to persuade or commu-

nicate.

Of late admirers of V. R. Krishna Iyer have gone to town singing his praises. He was, as a judge, undoubtedly humane and brought to bear on his judgement an awareness of the social realities and of the lot of the underprivileged which few judges possessed or showed. But in matters of political importance, his political bias was all too apparent. He has been one of the three Judges of the Supreme Court who had a political past. The other two, Hegde and Baharul Islam were no ornaments to the Court. Nor was Iyer. His *obiter* in favour of Mrs. Indira Gandhi's continuance in office, when deciding her stay application against the Allahabad judgement, is a clear instance of bias. He drove a coach and four through norms of propriety concerning public pronouncements and appearances on political platforms. In his case, Communist Fronts. And he wrote his judgement wilfully, perversely, in a style which was ornate, florid, and quaintly funny. His desire to impress overcame his sense of duty. A judge should seek to communicate his reasons and conclusions dearly. Such perversity is a clear sign of vanity and vanity in such excess is a flaw in character. Krishna Iyer is no scholar. Denning is steeped in learning but it is worth reflecting on the damage which judicial subjectivism can do to the law and to the judicial system. Once Lord Diplock had to read the Riot Act to Denning while delivering judgement on an appeal to the Home of Lords from one of Denning's judgements. Diplock did so with remarkable eclat. "It endangers public confidence in the political impartiality of the judiciary which is essential to the continuance of the rule of law if judges, under the guise of interpretation, provide their own preferred amendments to statutes which experience of their operation has shown to have had consequences that members of the court before whom the matter comes consider to be injurious to the public interest."

These are the perils which the crusader—judge faces even if he is one endowed with the learning of a Denning. What of lesser mortals ? The ardour of the crusader is indistinguishable from the partisanship of the combatant and partisanship is a grave judicial offence.

Students of law should study Justice Bhagwati's dissent in Bachan Singh vs State of Punjab in which he has held the death penalty to be unconstitutional. Neither his research nor his labours, still his passionate language, can conceal the fact that he was legislating. In India the debate on judicial legislation is marred by cliches and simplistic generalisations. Abolition of the death penalty is a matter for decision by the elected representatives of the people. Is it judicial statesmanship for a judge to seek to obtain the abolition by judicial interpretation ?

Justice Bhagwati writes "It must be realised that the question of constitutional validity of death penalty is not just a simple question of application of constitutional standards by adopting a mechanistic approach. It is a difficult problem of constitutional interpretation to which it is not possible to give an objectively correct legal answer. It is not a mere legalistic problem

which can be answered definitively by the application of logical reasoning but it is a problem which raises profound social and normal issues and the answer must therefore necessarily depend on the judicial philosophy of the judge." Is not deference to the legislative the sounder course in such a case?

He proceeds to quote from Cardozo's *Nature of the Judicial Process* and fortifies himself with the oft-repeated quote that judges "do not stand aloof on these chill and distant heights; and we shall not help the cause of truth by acting and speaking as if they do. The great tides and currents which engulf the rest of men do not turn aside in their course and pass the judges by."

Cardozo's classic is so often misquoted or guided selectively that it bears pointing out that he was as much against lack of judicial discipline as he was against blind adherence to precedent. For, he added "You may say that there is no assurance that judges will interpret the mores of their day more wisely and truly than other men. I am not disposed to deny this, but in my view it is quite beside the point. The point is rather that this power of interpretation must be lodged somewhere, and the custom of the constitution has lodged it in the judges. If they are to fulfill their function as judges, it could hardly be lodged elsewhere. Their conclusions must, indeed, be subject, to constant testing and retesting, revision and readjustment; but if they act with conscience and intelligence, they ought to attain in their conclusions a fair average of truth and wisdom. The recognition of this power and duty to shape the law in conformity with the customary morality is something far removed from the destruction of all rules and the substitution in every instance of the individual sense of justice, the *arbitrium boniviri*. That might result in a benevolent despotism if the judges were benevolent men. It would put an end to the reign of law."

This is the danger. Denning is well aware of it for he writes in his latest book, "There remains the most touchy question of all. May not the judges themselves sometimes abuse or misuse their power? It is their duty to administer and apply the law of the land. If they should divert it or depart from it — and do so knowingly — they themselves would be guilty of a misuse of power. So we come up against Juvenal's question, '*Sed quis custodiet ipsos custodes*? (But who is to guard the guards themselves?) That question was asked in the United States at the time of President Roosevelt's New Deal in 1935. It may be asked here again before long. In theory the judges of the higher echelon are appointed by Her Majesty the Queen: but in practice by the Prime Minister, who in turn looks to the Lord Chancellor. Suppose a future Prime Minister should seek to pack the Bench with judges of his own extreme political colour. Would they be tools in his hand? To that I answer 'no.' Every judge on his appointment discards all politics and all prejudices. You need have no fear. The judges of England have always in the past — and always will — be vigilant in guarding our freedoms. Someone must be trusted. Let it be the

judges."

All the greater reason why the judges, on their part, must combine restraint with actionism and discipline their ardour before it sweeps them from error to error.

Sumo

GAURI DESHPANDE

I BET you have been wondering just when I was going to write *this* article, considering that Sumo has been steadily climbing the charts over the past two years and now occupies a pre-eminent position in my heart, and also considering that my love of Sumo added its mite (which you would think an excessively inappropriate word when you appreciate the fact that the combined weight of the 40 top division wrestlers would be nudging six tons) to my decision to return to Japan. But I am afraid that I put that down as the title just to evoke this kind of a response from you. This article concerns Sumo only in a minor way, only, as it were, as an illustration of something more centrally important. (Hang in there Sumo fans, the real Sumo article is appearing soon, but not in the August pages of *Opinion* which refuses to stoop to printing colour photographs of devastatingly attractive, near-naked men in its pages). In this article I hope to illustrate, via Sumo, the concept of form, a concept that is central to the Japanese psyche.

To say that the Japanese mind, in its various manifestations, is ruled by this concept is to restate a truism. This fact about the Japanese is perceived even by those with only a bowing acquaintance with them. What is perhaps not quite so universally appreciated is the predominant position it occupies in all areas of Japanese life. Which is why I have picked on a so-called sport to illustrate it. Sports is an area where a culture tends to express itself typically and freely and here you have Sumo, Japan's national sport, which is not a sport at all! It is ritual and form from beginning to finish. Take for example the practitioners of Sumo, the sumotori. Most other sportsmen are all-round athletes, capable of switching between sports with little effort. A sumotori can do very little but be a Sumo wrestler. (There is a rumour that quite a few of them can ski very well, coming as they do from the northern prefectures of Japan, but the resultant image has always seemed unlikely to me). The idea of form in this activity encompasses not only the actual actions involved, but the very form of the practitioner himself. A real sumotori is distinctly pear-shaped (or, if you like, half-pear shaped, because from the back he looks more or less like any other heavy-weight wrestler). It is the solid and impressive (and very useful, as in the case of the present Ozeki Kotokaze) bulge of his belly that singles out a sumotori from any other kind of athlete. Those of them that disdain to cultivate this bulge

do not get very far in the world of Sumo. There *have* been a few grand champions with less impressive bellies, but they never made it to the 'great' category. Even the greatest of the post-war grand champions, the great Taiho himself did not look like Muhammad Ali, for instance, while he was the reigning champion. The 'sport' would seem to the non-Japanese to be ridiculously simple, requiring little skill and less training. It is nothing more, in fact, than variations on shoving, pushing, pulling and heaving. But anyone who goes around thinking that any large fellow can manage it with a little determination, has only to get in there and try, and he will soon find out how immensely powerful these mammoth men really are, and at the same time how dextrous and agile; and on top of that, the Japanese would say, how psychologically and spiritually fit. Though in recent years golf, baseball, even soccer and rugby have become very popular in Japan, they have not made a dent in Sumo's popularity. The Sumo amphitheatre is generally full on all days during all the six tournaments. In India, you would not be surprised to see the faces of the latest cricket and tennis stars gracing the advertisements for consumer products, but would you see there the faces of the latest Hindi-kesari, or kabaddi star? In Japan, the most popular ads are the ones featuring the huge Sumo stars; and just before bouts featuring these stars, manufacturing sponsors send flags to parade around the ring, proclaiming prizes for the winner. A 6-foot, 150 kg. wrestler is spoken of with admiration as having a truly perfect body, and another, weighing only (only!) 117 kg. will be said to need another twenty or thirty kg. at least to last out the pressure. What I mean is, the Japanese judge these men not by the standards applicable to mere mortals, but by those within the *form* of Sumo. For the enormous Asashio (183 cm.-183 kg.) there is only admiration. No one thinks he looks in any way peculiar. I don't, any more, either; but when I first saw him, I thought he looked grotesque, and burst out laughing. My Japanese friends were amazed. But that's how a sumotori *must* look, they all said. Yes, indeed. My own favourite star, whose appropriately large poster, much to S's amusement, adorns our room, is, alas, not so impressive, weighing a mere 145 kg., but I now think there can hardly be a more handsome or attractive man on earth!

To expand our argument, let me take another very Japanese and of course very formal art—the haiku. To expect a sumotori to look like Sylvester Stallone is to expect a haiku to describe the battle of Kurukshetra. This too, is a form incapable of appreciation or emulation by non-Japanese. Which is why the Japanese have agreed very magnanimously that there is a separate genre of the haiku, called the haiku in English (or French, or German, or Russian, or whatever), which is a far cry from the original. The real haiku, in fact, is more form than content, for the rules governing its composition, shape, theme and tone are, in spite of continuous debate, not really subject to much variation; whereas no one has much bothered to set down what a haiku must *say*, because that is not all

that important. Look at all the things a haiku must and must not be: first of all, it must have the 5-7-5 syllable form (though 'syllable' is only putting it roughly), it must deal with an experience or a phenomenon familiar to the poet and the reader both, it must be fresh but not startling, subdued in tone yet not colourless, strong but not emotional, wry but not cynical, humorous but not hilarious, celebratory but not jubilant, it is concise but not epigrammatical, amusing but not clever, it must deal with the specific but not with the unique, though it must subtly emphasise the ephemeral nature of things and events it can, in itself be immortal, what it hints at is quite often more important than what it is . . . and so on and so on. You can see why the Japanese think that it is not possible to explain all this to a 'foreigner', brought up in an entirely different literary tradition. To the Japanese, the greatness and immortality of Matsuo Basho's frog jumping into a pond is self-evident; it takes pages of notes before a foreigner begins to get even a glimmer of that greatness. A small haiku sent me by a friend said a world of things that his whole letter could not; "Moon hanging in midair/chill and lonely sound at night/footsteps hurrying home." And that is what haiku most of all is: personal. If you deprive that haiku of its form, it could not possibly say all that it does, because it would then end up being a banal report about the weather and the time of the day!

So there you have two examples of the domination of form—one in the world of sport, the other in the world of literature. I cannot even begin to talk about the more terrifying manifestations of this Japanese obsession with form, such as the tea ceremony, but I would like to round off this account with an incident which a housewife recently reported in one of the dailies' 'letters' column. Her husband and their neighbour, having made a date to practise their shots at the nearby golf course, one Sunday rose early, got dressed and came out of their houses. Having just waved her husband goodbye, the woman was startled to find him rushing back into the house and hurtling to the clothes closet while pulling off his blazer. "What's the matter?" she asked. "Nothing, nothing," answered her husband. "But he is wearing a sweater, so it won't look right for me to be in a blazer. I just came in to change." He rushed out again wearing a sweater, only to find his neighbour issuing from his house, now clad in a blazer.

In any other country the dialogue would have gone like this: Mr. A, upon seeing Mr. B in his blazer, "Come on, it's not all that cold, is it?" and Mr. B, "Well, no, but I thought I'd give the old blazer a bit of an airing." And off they would have gone to play golf, not bothering about what clothes they were wearing. But you must remember that this is a country where the greatest dramatic work, the *Shakuntal* or the *Mricchakatik* as it were, depicts a series of suicides, assasinations, massacres, murders, battles and other such mayhem; all of which apparently arising out of a country lord's blunder in wearing the wrong-coloured kimono to Court. Now, *that's* what I call respect for form.

Saving Lives

SHAHNAZ ANKLESARIA

THE diseases which affect 48.10 million Indians and account for 56 per cent of all deaths, can be prevented. Half the total diseases can be prevented with an improved environment, that is, proper sanitation and drinking water facilities. At present only 217 cities and towns (from a total of 3,119) and 31 per cent of the total urban population have been partially sewered. According to the National Sample Survey Organisation which conducted a survey in 1973-74, one-third of the urban households had no latrines, seven million households of a total of 40 million use the open ground for defecation. A mere 10 per cent of villages have adequate water supply. Although 83 per cent of the urban population has some provision for 'protected' water supply, (a considerable improvement from 1947 when only 11 per cent of the urban area was covered) the quality of water is not maintained, say eminent medical and public health experts in a 1980 report "Health for All: An alternative strategy." Those living in slums or chawls often have to depend on some street taps or open ponds and gutters for their water supply. The outbreak of disease consequently, is frequent and fatal.

"The concept of health in its totality, with preventive and promotive health care services in addition to the curative is still to be made more operational"—this is a confession made by the Sixth Five Year Plan (1980-85) Government of India, Planning Commission.

How can this happen? It would first necessitate a change in fiscal priorities. The current health budget is just 1.8 per cent of the total budget outlay for 1980-85. Health expenditure accounts for just half per cent of the gross national product.

Just increasing the health expenditure is not enough. The "preventive and promotive health care services" that the Planning Commisson mentions above, are presently provided by the 5,400 primary health centers and the 50,000 sub-centers across the country each of which service about 1,00,000 people in a district. At present a sub-centre's budget of roughly Rs. 10,000 and the primary health center's one of Rs. 200,000 lasts about four months. Additional finance could perhaps make salaries and working conditions of the government medical practitioner and his health team more attractive so that these rural jobs are not seen as 'punishment postings' to those who are sent there.

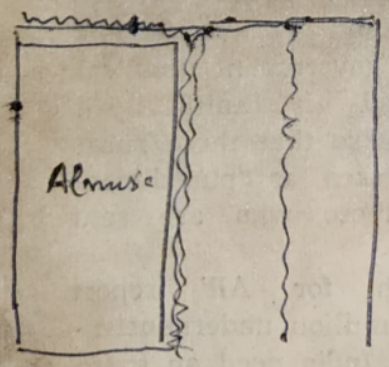
The 'Health for All' report states that 45 million undernourished children in India need an extra 300 calories per day. Just 40 paise per child per day would provide this supplement to their diet. The foodgrains required would be only 1.5 million tonnes a year—a part of our buffer stock. Children can be fed—but how many are concerned enough to do so?

Faced with such enormous chall-

enges, what can the ordinary individual do? Struggle to reorient priorities.

Post Independence, the Government has launched a series of campaigns to fight communicable diseases—programmes against malaria, tuberculosis, leprosy, filariasis, polio and small pox, have met with varying success in all but the last which has been totally eradicated. A concerned citizenry, particularly the medical profession, could attempt to monitor the effectiveness of such programmes in their cities. Civic and municipal bodies could be pressured to improve water supply and sanitation.

Ultimately, it is urban India that decides priorities in official planning and policies. One of the first things we can do is familiarise ourselves with the issues that face people outside our orbit of awareness. It is necessary then to leave the confines of the cities in which we function or those which we may occasionally visit and see how the world outside them survives. Such visits can result in many enriching experiences which prove beyond doubt that, ridden as this country is with poverty, suffering and corruption, there is enough beauty, generosity and dignity to make it worth fighting for.



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